

**TOWN OF CUSHING**  
**PLANNING BOARD**  
**Minutes of Meeting**  
**July 5, 2006**  
**Approved 8/2/06**

**Board Present:** Bob Ellis, Evelyn Kalloch, Arthur Kiskila, Frank Muddle, Dan Remian, PB Attorney Kate Knox, CEO Scott Bickford and Recording Secretary Crystal Robinson

**Board Absent:** None

**1. Call to Order:** Chairman Remian called the meeting to order at 7:00 pm and a roll call was taken.

**2. Minutes of 6/21/06:** The Chairman said he had asked Mrs. Robinson for a verbatim transcript of the June 21, 2006 meeting and complimented her on a good job. Mrs. Kalloch said on Page 11 "Lots 84 and 85" should have been "Lots 85 & 86". Mr. Remian said this correction should not be changed, but should be noted in an addendum, because the minutes were verbatim.

**ACTION:** Mrs. Kalloch made a motion, seconded by Mr. Muddle, to accept the minutes of the 6/21/06 meeting.  
Carried 5-0-0

**3. Minutes of 6/7/06:** Mr. Ellis requested the following corrections: on Page 1, Item #1, the action line should read "to keep Crystal taking *notes* this evening"; Page 2, Item #7, Sentence 5, the sentence should read, "Mr. Hull said that Cushing's Shoreland Zone [SZ] ordinance, which represented Resource Protection [RP] districts, seemed to *not* include Map 6, Lot 22...."; Page 3, last paragraph, "Mr. Ellis said that the PB had asked for overlays because of this type of problem." should read, "Mr. Ellis said the PB had *been asked to* produce overlays ...."; Page 4, first sentence should be a question, not a statement and should read, "Mr. Ellis *asked if* ...."; Page 6, 4<sup>th</sup> Motion, typographical error, should read "...seconded by Mr. Ellis, that since the area was within the Shoreland Zone...."; Page 8, Sentence 2, questioned a sentence regarding the check for the independent surveyor, but Mr. Remian said the minutes were correct on that point. Mrs. Kalloch said on Pages 6 & 7 she had abstained on all motions regarding criteria on land use for Mr. Lord.

**ACTION:** Mr. Ellis made a motion, seconded by Mrs. Kalloch, to accept the minutes of 6/7/06 meeting as read.  
Carried 5-0-0

**4. Continuation of review of Robbins Mountain Subdivision pre-application for completeness, Map 5, Lots 84, 85 and 86:** The Chairman asked James Tower if he had anything he wanted to present. Mr. Tower asked if a copy of the June 21 minutes was available and was provided with one, which he and his attorney, Wayne Crandall, perused. Mr. Tower then introduced himself as a registered engineer in the State of Maine, the owner of Engineering Dynamics and also the sole member of Cushing Holdings LLC and Last Resort Holdings LLC. He said he had a copy of a second MDOT entrance permit, which had been omitted from the packet he had provided the PB. Mr. Tower gave copies of this permit to the PB, CEO and PB attorney.

Mr. Tower then placed on display a drawing, which he described as a color version similar to the drawing included in his application packet. Mr. Tower said he recollected that the PB had asked him to add the following items to that drawing: the names of the three abutters and the delineation and note for the watercourse. He said these items were shown on this amended drawing, as were two minor changes. The first change was that the parking area that would serve the common area had been relocated in order to reduce the wetland impact; this had been compelled by the NRPA requirement to minimize wetland impact. Mr. Tower said he had also added a storm water treatment pond to Lot 1. He said this was a temporary addition, made necessary by new state requirements with which neither he nor the DEP agreed. Mr. Tower said the pond would probably be eliminated if the current rules were changed, as he expected. Mr. Tower then said that he had removed some things, as requested by the PB. The identification of specific septic system locations, their 100' well-prohibiting perimeters and specific well locations or zones had been removed, though test pit locations remained. Mr. Tower explained that this had been done to avoid possible multiple amendment applications asking the PB to allow relocation of these features once the lot owners were ready to build. Mr. Tower noted that Cushing's Subdivision ordinance required that well locations be shown

and asked the Board if this would require a waiver or if removal of the well locations had been part of the PB's intent.

Mr. Ellis asked Mr. Tower if he felt lot owners would adhere to well locations the developer sited. Mr. Tower responded that his plan depicted everything he felt the PB required, with the exception of well locations. He then said he would be filing a septic plan (which he displayed) in the Registry of Deeds. This septic plan included the items removed from the overall plan and Mr. Tower said each deed covenant would require that the property owners adhere to both plans. He said this would provide the restrictions he wanted, yet could be amended without the consent of the PB. Mr. Tower said if the PB agreed with this two-plan structure he would retool his previous three subdivision plans in the same manner.

CEO Bickford said the regulations did not require well locations but rather recommended them. At Mr. Bickford's recommendation, Mr. Tower said he could add a plan note that stated a well could be located anywhere greater than 100' from a test pit location. Mr. Remian said that would satisfy the requirements and Mr. Tower said he would do that. Mr. Remian asked Mr. Tower why he felt the filtration pond on Lot #1 was needed. The developer responded that the DEP was requiring an excruciating level of treatment: that every subdivision's storm water be treated to the same level or greater than in the old regulations where you were in the watershed of a body that had been identified as at risk from impact of development. He said this had been intended to protect lakes from the leaching of phosphates, but the ocean did not have algae blooms so phosphorous content was not an issue here. He repeated his assertion that this requirement would be rescinded for developments such as his. Mr. Tower provided further explanation of these new storm water regulations in response to questions from Mr. Ellis. Mrs. Kalloch asked how placement of the pool would affect Mr. Robbins' property. Mr. Tower responded that no one knew where Mr. Robbins' well and septic were located since they preceded municipal record keeping. Mr. Remian asked Mr. Tower if he felt the DEP had addressed the pollution problem with its regulations. Mr. Tower responded that he felt DEP's original plans had been altered in the legislative process and science had been sacrificed to environmental concerns.

Mr. Tower then referred the Board to Page 18 of the 6/21/06 minutes, to a motion that approved the application as complete, "conditioned on the updates of the plan." Mr. Ellis responded that the updates required were on Page 15 and Mr. Tower said they were 1) the addition of three names, 2) the identification of a watercourse and 3) darkening of the contours. Mr. Tower asked that the Board to acknowledge that those items had been added to the plan and he provided the members with updated plan copies. He said he had added other information, including a description of the storm water plan that could be understood by a layman and a copy of a letter from Machias Savings Bank. Mrs. Kalloch said the Board had also requested a list of investors and Mr. Tower pointed it out. Mrs. Kalloch then said a copy of the West Knoll deed was not included and Mr. Tower said it would be at the Town Office by Friday morning (7/7/06). Mr. Remian asked the status of the DEP site plan review application and Mr. Tower said a change in personnel at DEP had required a meeting with Becky Mathers and he anticipated receipt of approval within a few days.

Mr. Remian asked how the PB wanted to handle Mr. Tower's proposed well and septic location plan. Mr. Ellis said it was fine with him as long as it was noted on "Plan B" that it was conditional upon modifications or changes being made only to well and septic locations. Mr. Bickford said it should be noted on the legend that the well locations on the plan were recommended. Mr. Ellis asked if it was necessary to note on Plan B that changes to the well and septic locations could be made without PB approval. PB Attorney Kate Knox replied that she thought Plan A should make reference to Plan B's recommended sites; she said she would check to see if any language should be added to Plan B to make sure the two plans melded. Mrs. Kalloch ascertained that nothing had been transferred between Mr. Tower and Randy as yet, though there was an agreement.

Mr. Tower suggested the following language be added to the notes: "No well can be constructed within 100' of any test pit or septic disposal field. The location of septic disposal fields, test pits or wells can be changed without Planning Board approval." He said the locations would be reviewed when property owners applied for their plumbing permits. Mr. Bickford said the proposed note overqualified the situation since a failed septic system could be replaced by one at a reduced distance from the well. Mr. Tower said there was space for a well 100' from every proposed septic system on each lot; if the septic failed it could be excavated and rebuilt in the same location. Ms. Knox said she would prefer to work out the language after some study and Mr. Remian agreed. Mr. Ellis said he felt the conditions of the 6/21/06 motion for completeness had been met, with the exception of the precise language on this point.

**ACTION:** Mr. Ellis made a motion, seconded by Mrs. Kalloch, that the application was complete with the exception of the language for the criteria in Section 7.13 regarding well locations, which would be written by the lawyers.  
Carried 5-0-0

**5. Amendment of Meduncook Plantation Subdivision, Map 5-6, Lot 26, presented by James Tower:** Mr. Remian said he had received no report from Gartley & Dorsky and asked Mr. Tower if he had. Mr. Tower said Mr. Dorsky had told him today that he had one more day of fieldwork before assembling the data for the PB. Mr. Tower recollected that Mr. Dorsky had said he could have his report ready by July 12. Mr. Remian suggested the Public Hearing for Robbins Mountain be held at the next PB meeting on August 2, followed by the Meduncook Amendment for Lot #26.

**6. Resource Protection survey proposal to be presented by Clifford Goodall, Esquire:** Mr. Remian said he had not received this proposal and asked Mr. Tower if he intended to pursue it. Mr. Tower said there had not been a full consensus of the PB as to how to interpret the Shoreland Zoning Regulations [SZ] with regards to what constituted a Resource Protection zone [RP] resulting from the definition of slopes in excess of 20% for an area greater than two contiguous acres. He said Mr. Cunningham's definition had agreed with his own, which was "what is on the ground controls; not a map or listing of lot numbers." He said he understood that when the PB signed the final documents there were no RP zones shown on the drawing, which there should have been had they existed. Mr. Tower admitted that his interpretation of that segment of the SZ ordinance had been changed by legal advice he had received. It had been explained to him, he said, that the core of our legal system had a principle that an adjudicating body, including a PB, had a fundamental right to be wrong. He suggested that the PB had not understood the SZ ordinance well enough to say that RP zones were present. If the PB erred, he said, the legal system provided an appeal period that had elapsed two years ago. Since that period had elapsed, Mr. Tower said he did not believe the issue could be reopened. In his opinion, in the course of reviewing land use permit applications, the PB could not go back into things required for subdivision review to examine them and open the whole thing up again. If that could be done, he said, there was no point in getting a signed Mylar and recording it at the Registry of Deeds. Therefore, he felt he could rely on that decision. Though he was willing to spend the money for an RP survey, he felt the results would not change anything.

Mr. Remian stated that Mr. Tower's Hornbarn Hill [HH] Subdivision application had stated there were no RP zones there and he could find no mention in the minutes of the issue being addressed. Mr. Tower recollected that previous CEO Boothby had authored Cushing's Subdivision regulations and tweaked the SZ ordinance and was chairman of the PB, twenty-five years prior to Mr. Tower's subdivision applications for HH and Gaunt Neck [GN]. Mr. Tower said he had learned from Mr. Boothby that his intent was that the map was for illustration purposes only; he drew the map because it was required by the DEP as part of the process, though he had noted it was illustrative only. Mr. Boothby told Mr. Tower he had done this because Cushing had so many miles of shoreline and so much of the forest canopy was evergreens that aerial photographs could not provide reliable contour depictions. Mr. Tower quoted Mr. Boothby as saying the only reliable mapping of 20% slope was by on-ground survey, which he did not do because of prohibitive cost. Therefore, Mr. Tower said, Mr. Boothby told the PB that the maps were illustrative only and could not be relied upon.

Mr. Remian said the PB had asked for a moratorium on the SZ ordinance because it had received so many different legal and state opinions; the PB wanted to straighten it out and rewrite the regulations so both the PB and applicants could understand them. He said it was unfair to Cushing property owners that the map was merely illustrative. Mr. Tower agreed and said the process going forward should be that the applicant was responsible for proving whether his land was or was not in RP. He said a moratorium was unnecessary if the procedure being employed on his Lot #26 (independent survey) was followed in all cases.

Mr. Tower said that his attorney, Cliff Goodall, had read the letters from Rich Baker and MMA and believed they were not saying what the PB believed they were saying. Mr. Goodall believed the MMA letter agreed that what was measured on the ground controlled. Mr. Tower said he had hoped to have a workshop to discuss the issue because he felt a moratorium would not be successful. Chairman Remian said he disagreed.

**7. Adjournment:** Mr. Remian made a motion, seconded by Mr. Ellis, to adjourn the meeting at 8:20 pm.  
Carried 5-0-0

Respectfully submitted,

Deborah E. Sealey  
(Transcribed from the tape recordings and notes of Crystal Robinson)